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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-218447.2 **DATE:** June 25, 1985

MATTER OF: Turbine Engine Services--Request for
Reconsideration

DIGEST:

1. A prospective contractor's alleged unacceptable performance of a prior federal contract is one factor an agency should consider in determining the firm's responsibility, but does not automatically render the firm ineligible for award. GAO will not review an agency's affirmative determination of a firm's responsibility where there is no allegation or showing that the agency determination resulted from possible fraud or bad faith, or that a definitive responsibility criterion was not met.
2. A bid is nonresponsive, and the bidder submitting it thus is not eligible for award, where the intended total bid price cannot be determined from the bid documents submitted at the time of bid opening.

Turbine Engine Services (Turbine) requests reconsideration of our decision Energy Maintenance Corp; Turbine Engine Services Corp., B-215281.3; B-215281.4, Mar. 25, 1985, 64 Comp. Gen. ___, 85-1 C.P.D. ¶ 341, holding that the U.S. Coast Guard improperly canceled solicitation No. DTCG40-84-B-0173 for turbine engine overhauls. In sustaining the protest, we recommended that the Coast Guard reinstate the solicitation and make award to the protester, Energy Maintenance Corporation (EMC), the low responsive bidder, if the firm was found otherwise eligible for award. Turbine claims our decision and recommendation are erroneous. We affirm the decision.

We sustained the EMC protest on the ground that the agency incorrectly had determined that the solicitation did not fully describe the required work, and thus was

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ambiguous.^{1/} We found that the solicitation as a whole clearly set forth the agency's needs, and thus should not have been canceled. Turbine argues that our decision is erroneous because: (1) it is inconsistent with our earlier decision, Turbine Engine Services Corp., B-215281.2, Aug. 21, 1984, 84-2 C.P.D. ¶ 206, upholding the cancellation of solicitation No. DTCG40-84-B-0173; (2) EMC should have been ineligible for the award because it furnished an unacceptable engine under a prior Coast Guard contract; and (3) we should have recommended an award to Turbine instead of EMC since Turbine was the low responsive bidder.

We did reject Turbine's arguments that the solicitation specifications were not defective in our Turbine decision and held that cancellation of the solicitation was unobjectionable. That decision, however, was based on the facts before us at that time. Turbine previously had objected (in Turbine Engine Services Corp., B-215281, May 29, 1984, 84-1 C.P.D. ¶ 582, which we dismissed as untimely filed) that the specifications were defective. In view of this earlier argument and the agency's position, we found Turbine's new argument unpersuasive. Subsequently, we received a protest from EMC, and learned that EMC was neither party to nor advised of Turbine's protest of the cancellation. As a result, and because EMC raised arguments never asserted by Turbine, we considered EMC entitled to a decision on the merits of its protest. The agency's response to EMC's protest and the record developed for the protest showed for the first time that the cancellation in fact was not legally justifiable.

That EMC may have furnished an unacceptable engine under a prior Coast Guard contract does not render erroneous our recommendation that award be made to EMC "if otherwise found to be eligible for the award." Contrary to Turbine's apparent understanding, unsatisfactory past performance does not automatically render a firm ineligible for future contract awards. Rather, performance history is but one of several factors an agency should take into account in considering a prospective contractor's responsibility, that is,

^{1/} Turbine's portion of the protest concerned the adequacy of the specifications in the resolicitation of this requirement issued after cancellation of the original solicitation. Turbine's protest thus became academic once we held that the original solicitation should be reinstated.

its ability to perform satisfactorily. Jay Fran Corp., B-217145, Jan. 2, 1985, 85-1 C.P.D. ¶ 8.

After receiving our recommendation, the Coast Guard apparently determined that, notwithstanding alleged past performance problems, EMC was a responsible contractor; we have been advised that award has been made to EMC. As there is no allegation or showing that EMC was found responsible as a result of agency fraud or bad faith, or that a definitive responsibility criterion was not met, we will not consider this matter further. See Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1985); Jan Fran Corp., supra.

As to whether Turbine in fact was the low responsive bidder, Turbine was not eligible for the award here--and our recommendation that award be made to EMC thus is not improper--because its bid did not specify prices for each replacement part as called for under the solicitation. Instead of providing prices for each part on the 3-page parts list, Turbine stated as the price for all the parts "Vendor Net (T.P.M.S. + 8-1/2%)." In other words, Turbine offered the parts at its cost from TPMS (Turbo Power & Marine Systems, the original equipment manufacturer specified in the solicitation) plus an 8-1/2 percent mark-up.

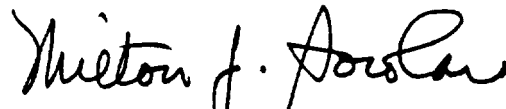
In order to be deemed responsive, a bid must unequivocally offer to provide the requested items and meet specification requirements at a firm, fixed price. A bid that limits the firm's contractual obligation or does not offer performance at a firm, fixed price must be rejected as nonresponsive. Epcon Industrial Systems, Inc., B-216725, Dec. 27, 1984, 85-1 C.P.D. ¶ 2. A bidder's intended total price must be evident from all the bid documents submitted at the time of bid opening. Id.

Turbine's bid did not meet the above standard. While it would become clear during performance what price the government would be required to pay for a given part, this price could not be determined from the face of Turbine's bid; Turbine neither specified a particular TPMS price list as the basis for the reference in its bid, nor (we are advised by the agency) submitted a copy of a price list with its bid. Consequently, Turbine's intended bid price could not be determined at the time of bid opening. Under these circumstances, the Coast Guard properly rejected Turbine's

bid as nonresponsive, and we properly recommended award to EMC (if otherwise qualified), as the low responsive bidder.^{2/}

Turbine states that it did not bid specific prices due to a TPMS policy of pricing its parts by part number and condition. It is not immediately clear to us why specific prices therefore could not be included in Turbine's bid. In any case, no matter what the business practices of qualified parts suppliers, since the solicitation required that prices be furnished for each part and provided for award based in part on these prices, bidders, including Turbine, were required to include them in their bids. If Turbine believed the solicitation was somehow deficient due to the parts pricing requirement, it was free to protest the matter to the Coast Guard or our Office prior to bid opening. Turbine did not do so.

Our prior decision is affirmed.



Acting Comptroller General
of the United States

^{2/} As discussed in our decision on EMC's protest, EMC's bid also contained uncertainties as to certain parts prices. Since EMC clarified its bid; the range of uncertainty was clear from the face of the bid; and the bid was low at either end of that range, EMC's bid was sufficiently definite and, thus, responsive.